

*This Deed is Exempt from Taxation under Virginia
Code §58.1-811(A)(3), §58.1-811(C)(4) and §17.1-266
[no retention of division rights]*

PIN _____

DEED OF EASEMENT

THIS DEED OF EASEMENT made this _____ day of _____, 2013, by and between _____ and _____, **husband and wife**, Grantors (hereinafter "Grantor"); and the **COUNTY OF FAUQUIER**, a political subdivision of the Commonwealth of Virginia (hereinafter the "County" and sometimes "Grantee"), whose address is 10 Hotel Street, Warrenton, Virginia 20186.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of the property located in Fauquier County, Virginia, consisting of ____ acres and ____ acres more accurately described in "**Exhibit A**" attached hereto and hereinafter referred to as the "Property"; and

WHEREAS, under the County's Purchase of Development Rights ("PDR") Program, the County is authorized to acquire conservation easements over qualifying properties in order to accomplish the purposes of the PDR Program and the Open-Space Land Act (Virginia Code §10.1-1700 *et seq.*); and

WHEREAS, the purpose of the Fauquier County Purchase of Development Rights Program is to protect the critical mass of farmland which is necessary for the continued vitality of production agriculture by acquiring conservation easements for the purpose of conserving lands for farming and to provide open space that ameliorates the impact of development in the County as stated in the February 19, 2002 Resolution of the Board of Supervisors and the April 19, 2004 Ordinance amending Chapter 8 of the Code of Fauquier County; and

WHEREAS, the Grantor has voluntarily agreed to convey this easement and have the Property subject to the terms contained herein; and

Consideration: \$

Return to: County Attorney's Office

WHEREAS, the County's acquisition of the conservation easement identified herein furthers the purposes of the PDR Program in that such acquisition, among other things, assures that Fauquier County's resources are protected and efficiently used, establishes and preserves open-space, and furthers the goals of Fauquier County's Comprehensive Plan to protect Fauquier County's natural, scenic and historic resources, promotes the continuation of a viable agricultural and forestal industry and resource base, and protects the quality of Fauquier County's surface water and groundwater resources; and

WHEREAS, the Grantor and the County have entered into a purchase agreement under the terms of which the County has agreed to pay the Grantor the sum of \$_____ for this conservation easement; and

WHEREAS, to the extent that the amount paid by the County for this conservation easement represents less than its full fair market value, the Grantor hereby makes a bargain sale of this easement to the Grantee to the extent of the cash consideration paid and a gift of the balance of the easement, and the Grantee by execution of the easement acknowledges receipt of the gift and confirms that it has not provided any goods or services to Grantor other than the consideration recited herein;

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, covenants and agrees as follows:

1. GRANT AND CONVEYANCE OF EASEMENT.

The Grantor hereby grants and conveys to the Grantee and its successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross over the Property consisting of _____ acres more particularly described in "**Exhibit A**" attached, restricting in perpetuity the use of the Property in the manner set forth in this Deed of Easement.

2. USES AND ACTIVITIES.

In order to accomplish the purposes of the PDR Program and the Open-Space Land Act (Virginia Code §10.1-1700 *et seq.*), the Property shall be subject to the following restrictions:

- A. Except as provided in Subsection 2.B, no subdivision, division, family transfer, boundary adjustment or other adjustment or division of the property shall be permitted.
- B. Construction, installation, location, placement of structures and improvements. There shall be no construction, placement or maintenance of any structure or improvements on the Property unless the structure or improvements are either existing on the Property as of the date of this Deed of Easement or are authorized as follows:
 - 1. Existing dwellings. The repair, expansion or replacement of a dwelling that exists as of the date of this Easement is permitted. Each existing parcel will consist of no more than one (1) primary dwelling and no more than one (1) secondary dwelling.
 - 2. Division of Property. Except as provided herein, the Property may not be divided or subdivided into any additional lots. The following non-subdivision uses are permitted: (a) no more than 1 primary single-family dwelling, no larger than 5,000 square feet of above-ground enclosed living space, is permitted on the [each] parcel. Further, no more than 1 secondary dwelling, no larger than 2,000 square feet of above-ground enclosed living space, is permitted on the [each] parcel together with non-residential outbuildings commonly and appropriately incidental thereto, provided however and notwithstanding any other provision of this section to the contrary; (b) accessory structures such as non-residential outbuildings, swimming pools, gazebos, garages, and tool sheds; and (c) farm buildings and structures.
 - 3. Boundary Line Adjustments. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions of the Property, provided that Grantee approves such adjustments, is made party to any Deed creating a boundary line adjustment, and at least one of the following conditions is met:
 - i. The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or
 - ii. The proposed boundary line adjustment shall have been reviewed and approved in advance by the Grantee.
 - 4. Impervious Surface Limitation. The collective footprint of all buildings, structures and impervious surfaces located on the property shall not exceed two (2%) percent of the surface area of the property, unless prior written permission for a greater footprint or surface area is obtained from

the Grantee. For the purpose of this paragraph, the collective footprint is the ground area measured in square feet of the buildings and structures set forth in paragraph 2.B.2 above, and all other impervious surfaces, excluding roads.

5. Improvements. The following may be constructed, installed, located or placed, provided they are otherwise consistent with this Deed of Easement and the PDR Program, with prior approval by the Grantee: (a) driveways and other improvements and facilities customary and related to the use of an existing dwelling or a new permitted dwelling; and (b) improvements and facilities related to a land division, as required by the County.

C. Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses. There shall be no industrial or commercial uses or activities conducted on the Property, provided, however, the following uses are not deemed to be commercial or industrial uses for the purposes of this Deed of Easement:

1. Single family residential uses;
2. Agricultural uses, consisting of establishing, re-establishing, maintaining or using cultivated fields, orchards or pastures in accordance with generally accepted agricultural practices for the purpose of producing or maintaining crops, including horticultural specialties; livestock, including all domestic and domesticated animals; and livestock products. This easement shall not prohibit the use, composting and sale of animal waste produced and processed on site.
3. The on-site processing and retailing of agricultural products, specifically including, but not limited to, the harvesting, storage, fermenting, malting, winnowing, and husking of grain;
4. Forestal uses, consisting of reforestation, timber harvesting and forest management activities undertaken to produce wood products and/or improve the health and productivity of the woodland. The processing of wood products is not a forestal use, except as an accessory use with prior approval by the Grantee;
5. Seasonal activities that do not permanently alter the physical appearance of the Property that are related to and consistent with an authorized use of the Property delineated herein including, but not limited to, the sale of agricultural products grown or raised on the Property, the granting of licenses to enter and use the Property for hunting or fishing, corn mazes, hay rides or other similar activities.
6. Uses that are subordinate and customarily accessory to a principal use of the Property that are not expressly prohibited by this Deed of Easement

and are otherwise consistent with the conservation purposes of this Deed of Easement, the PDR Program and the County Code.

7. Uses or activities not expressly excepted herein, but which are determined by the Grantee in writing not to be a commercial or industrial use or activity, and to be consistent with the purposes of this Deed of Easement.
- D. Billboards and signs. No billboards or other signs may be displayed on the Property, except for signs that relate to the Property or to permitted activities (including commercial activities) thereon. Temporary political signs are allowed. No sign shall exceed twenty-four (24) square feet.
- E. Grading, excavation, earth removal, blasting and mining. Earth removal is prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading, blasting, and excavation is allowed but shall not materially alter the topography of the Property; grading, blasting, and excavation shall be allowed for dam construction to create private containment ponds or lakes, and during the construction of permitted structures or associated improvements. Common agricultural activities such as plowing, erosion control and restoration are permitted activities that do not materially alter the topography of the Property. Activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation purpose of or the restrictions set forth in this Easement, and that prior written approval for the same shall have been obtained from Grantee, shall be allowed.
- F. Management of agricultural and forestal resources. The application of Best Management Practices, as established by the Virginia Department of Conservation and Recreation (DCR) and the Virginia Department of Forestry (DOF), shall be undertaken to control erosion and protect water quality in all agricultural and forestal activities.
- G. Accumulation of waste material. There shall be no accumulation or dumping of trash, refuse or junk on the Property. This restriction shall not prohibit customary agricultural, horticultural or wildlife management practices including, but not limited to, establishing brush, compost piles, the routine and customary short-term accumulation of household trash or the composting of animal waste.
- H. Non-transferability of Extinguished Rights: The Property or any portion thereof shall not be included as part of the gross area of other property not subject to this easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster

development arrangement or otherwise, provided, however, that with prior written permission of the County, this paragraph shall not preclude such transfer of development rights from the destruction or demolition of any existing residential buildings on the property.

3. MISCELLANEOUS PROVISIONS.

- A. No public right-of-access to Property. This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof, except as Grantor may otherwise allow in a manner consistent with the terms of this Deed of Easement and the PDR Program.
- B. Easement applies to the whole Property and runs with the land. The covenants, terms, conditions, and restrictions of this Deed of Easement shall apply to the Property as a whole, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity.
- C. Enforcement. In addition to any remedy provided by law or equity to enforce the terms of this Deed of Easement, the parties shall have the following rights and obligations:
 - 1. Monitoring. Employees or agents of Grantee may enter the Property from time-to-time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. The Grantee shall give reasonable prior notice before entering the Property. The Grantor shall not unreasonably withhold permission.
 - 2. Baseline Data. In order to establish the present condition of the Property, the Grantee has examined the Property and prepared an inventory of relevant features, conditions, and improvements ("Baseline Documentation") which is incorporated by this reference. A copy of the Baseline Documentation has been provided to Grantor, and the original shall be placed and remain on file with Grantee. The Grantor and Grantee agree that the Baseline Documentation is an accurate representation of the Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with this Deed of Easement. The Grantor and Grantee further agree that in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the Grantor and Grantee shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.
 - 3. Action at law inadequate remedy. The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained and, therefore, in the event that the Grantors, their successors or assigns, violate or breach any of the

terms, conditions and restrictions herein contained, the Grantee, its successors or assigns, may institute a suit, and shall be entitled to enjoin, by *ex parte* temporary and/or permanent injunction, such violation and to require the restoration of the Property to its prior condition.

4. Restoration. Upon any breach of the terms of this Deed of Easement by Grantor, Grantee may require by written demand to the Grantor that the Property be restored promptly to the condition required by this Deed of Easement. Upon Grantor's receipt of a written demand by the Grantee to restore the Property to the condition required by the Deed of Easement, Grantor will have thirty (30) days to either restore the Property or file with the Circuit Court of Fauquier County an action to determine whether or not a breach has occurred. Grantee's right to enter onto the Property and restore the Property shall be tolled during the pendency of any suit filed under the terms of this section. Upon the expiration of the 30 day period or the entry of a final judgment by the Circuit Court of Fauquier County, the Grantee may, but is not required, to restore the Property to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel as a lien against the Property, provided, however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the land records prior to such purchase. Such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.
 5. Failure to enforce does not waive right to enforce. The failure of Grantee to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.
 6. Costs of Enforcement. Any costs incurred by the Grantee in any Court action or in any restoration project instituted under Section 3.C.4, including, without limitation, costs of suits and reasonable attorney's fees shall be borne by the Grantor.
 7. No right of enforcement by the public. This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantor for any violation of this Deed of Easement.
- D. No Exchange. The Grantor shall not have the option to re-acquire any property rights relinquished by this Deed of Easement.
- E. Notice of proposed transfer or sale. The Grantor shall, within thirty (30) days of the sale of the property, notify the County, in writing, of the transfer or sale of the property. Said notice shall include the name and address of the new owner of the property. In any deed conveying all or any part of the Property, this Deed of

Easement shall be referenced by instrument number or deed book and page number in the deed of conveyance and shall state that this Deed of Easement is binding upon all successors in interest in the Property in perpetuity.

Notification Address:

*Fauquier County Agricultural Development Department
35 Culpeper Street
Warrenton, VA 20186*

- F. Relation to applicable laws. This Deed of Easement does not replace, abrogate or otherwise supersede any Federal, State, or local laws applicable to the Property.
- G. Zoning Ordinance. Notwithstanding any other provision of this Deed of Easement, the Fauquier County Zoning Ordinance shall apply to the Property and shall take precedence over this Deed of Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Deed of Easement.
- H. Severability. If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby.
- I. Recordation. Upon execution by the parties, this Deed of Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.
- J. Authority to convey easement. The Grantor covenants that he is vested with good title to the Property and may convey this Deed of Easement.
- K. Authority to accept easement. The Grantee is authorized to accept this Deed of Easement pursuant to Virginia Code §10.1-1701.
- L. Proceeds from eminent domain. If the rights or restrictions established by this Deed of Easement are extinguished by eminent domain or other similar proceedings, the County shall be entitled to the proceeds pertaining to the extinguishment of its rights and interest under this Deed of Easement, as determined by the ratio of the value of this Deed of Easement and the restrictions imposed thereby, to the value of the fee interest in the Property as encumbered by this Deed of Easement. The values shall be determined by a qualified appraisal performed by an appraiser mutually agreed to by the Grantor and by the County. Any other proceeds not attributable to the easement shall be the property of the landowner. The Grantor and the Grantee intend that this easement be perpetual and not be extinguished, and extinguishment of this easement is not permitted under the Open-Space Land Act, Virginia Code Section 10.1-1700 *et seq.* Restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a

portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth below, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. The Grantor agrees that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this easement and of the Open-Space Land Act. No part of the Property may be converted or diverted from open-space uses as herein defined except in accordance with Virginia Code Section 10.1-1704.

- M. Transfer of easement by Grantee. Except as qualified by Paragraph S herein, neither Grantee nor its successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code §10.1-1700.
- N. Construction. This Deed of Easement shall be construed to promote the purposes of this Deed of Easement and the PDR Program.
- O. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its employees, agents, successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments including, without limitation, reasonable attorney's fees arising from, or in any way connected with, the result of a violation or alleged violation on the Property of any State or Federal environmental statute or regulation.
- P. Controlling Law. The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia.
- Q. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Deed of Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Deed of Easement, all of which are merged herein. Any amendments to this Deed of Easement shall be in writing, signed by each of the parties.
- R. Forms and Tax Credits or Deductions. The parties hereto agree and understand that any value of any donation claimed for tax purposes must be fully and accurately substantiated under the requirement of State and Federal tax codes applicable to donations of conservation easements and by an appraisal from a

qualified appraiser as defined in IRS regulations (see section 1.170A-13(c)(5)), and that the appraisal is subject to review and audit by the appropriate tax authorities. **THE COUNTY OF FAUQUIER AND ANY CO-HOLDER MAKE NO EXPRESS OR IMPLIED WARRANTIES REGARDING WHETHER ANY TAX BENEFITS WILL BE AVAILABLE TO GRANTOR FROM THE DONATION OR ANY PARTIAL DONATION OF THIS EASEMENT, NOR WHETHER ANY SUCH TAX BENEFITS MIGHT BE TRANSFERABLE, NOR WHETHER THERE WILL BE ANY MARKET FOR ANY TAX BENEFITS WHICH MIGHT BE TRANSFERABLE, NOR WHETHER THIS DEED OR ANY OTHER FORM OR DOCUMENTATION PREPARED BY THE COUNTY WILL SATISFY ANY STATE OR FEDERAL REQUIREMENT, LAW, OR REGULATION RELATED TO TAX CREDITS OR DEDUCTIONS FOR THE DONATION OR PARTIAL DONATION OF THIS EASEMENT.**

- S. County right to designate easement co-holder. The County of Fauquier shall have the right in its sole discretion now and at any time in the future to transfer part or all interest it has under this easement to a government or non-profit agency capable of co-holding conservation easements. Such transfer shall not require the consent of the Grantor or any trustee under a deed of trust which has been subordinated to this easement.

Acceptance of this conveyance by the County of Fauquier is authorized by § 15.2-1803 of the Code of Virginia and is evidenced by the signature of Paul S. McCulla, Fauquier County Administrator, by authority of a resolution adopted by the Board of Supervisors of Fauquier County at its [INSERT DATE] meeting in Warrenton, Virginia.

[SIGNATURES ON NEXT PAGE]

WITNESS the following signatures and seals on the date first above written:

GRANTOR:

COMMONWEALTH OF VIRGINIA
COUNTY OF FAUQUIER to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this
_____ day of _____, 2016, by _____,
Grantor.

Notary Public

My commission expires:

Approved as to Form:

Accepted on behalf of Fauquier County

By: _____

**Kevin J. Burke,
County Attorney**

By: _____

**Paul S. McCulla,
County Administrator**

Date: _____

Date: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF _____ to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this _____ day of _____, 2016, by **Paul S. McCulla**, County Administrator, on behalf of **Fauquier County**.

Notary Public

My commission expires:

EXHIBIT A

PIN _____

(PROPERTY DESCRIPTION HERE)

CERTIFICATE OF PURCHASE OF TITLE INSURANCE

I hereby certify that the Board of Supervisors of Fauquier County, Virginia, a body politic, has purchased a policy of title insurance in the amount of \$ _____ covering the property described in the Deed of Easement from _____, to which this Certificate is attached and made a part thereof. The policy of title insurance is on file with the Clerk of the County.

RESPECTFULLY CERTIFIED this _____ day of _____, 2016.

Kevin J. Burke, County Attorney